

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<b>BURSOR &amp; FISHER, P.A.,</b>  <b>Plaintiff,</b>  <b>v.</b> <b>FEDERAL COMMUNICATIONS COMMISSION,</b>  <b>Defendant.</b>	<b>Civil Action No.: 11-CIV-5457 (LAK)</b>
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**DECLARATION OF JOSEPH I. MARCHESE**

JOSEPH I. MARCHESE, being duly sworn, deposes and says:

1. I am an attorney at law licensed to practice in the State of New York. I am a member of the bar of this Court and a partner with the law firm of Bursor & Fisher, P.A., counsel of record for Plaintiff (“Bursor & Fisher”). I make this declaration in support of Bursor & Fisher’s application for an order to show cause why a preliminary injunction should not be issued to enjoin defendant from improperly withholding agency records and order the production of agency records requested by Plaintiff pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552.

2. I have personal knowledge of the facts set forth in this declaration, and, if called as a witness, could and would competently testify thereto under oath.

3. On March 20, 2011, AT&T Inc. (“AT&T”) announced its plan to acquire T-Mobile USA (“T-Mobile”) from Deutsche Telekom AG for \$39 billion (the “Proposed Takeover”).

4. The Proposed Takeover is under review by various federal entities including the Federal Communications Commission (“FCC”). *See* WT Docket No. 11-65. To move forward with the deal, the FCC must approve the transfer of T-Mobile’s spectrum licenses to AT&T.

5. Plaintiff represents Butch Watson, a T-Mobile wireless customer, and other wireless customers who are parties to the proceeding before the FCC, and who oppose AT&T’s application. On June 20, 2011, Plaintiff filed with the FCC reply comments of its client, Butch Watson, in opposition to AT&T’s application in WT Docket No. 11-65 (“Reply Comments”). The Reply Comments were submitted along with a redacted version of the Declaration of Colin B. Weir made on behalf of Butch Watson, dated the same date and filed in WT Docket No. 11-65 (“Filed Weir Declaration”).

6. The Filed Weir Declaration provides pre-merger and *pro forma* post-merger Herfindahl-Hirschman Index (“HHI”) market concentration values, and identifies where the Proposed Takeover would result in significant competitive concerns for various markets.

7. In his Declaration, Mr. Weir used confidential NRUF/LNP data to calculate wireless market shares, which in turn were used to calculate the four-firm HHI concentration values in various Economic Areas.

8. According to the FCC, Mr. Weir’s HHI concentration values, although aggregated and not carrier-specific, are subject to the NRUF/LNP Protective Order, DA 11-711 in WT Docket No. 11-65 (“Protective Order”). Therefore, the Filed Weir Declaration was redacted for public inspection where it contained his HHI calculations.

9. On June 20, 2010, Plaintiff submitted an electronic Freedom of Information Act (“FOIA”) request to the FCC, requesting “An unredacted copy of the [Filed Weir Declaration].”

Without the requested information, neither Plaintiff, its clients nor the general public can effectively analyze the effects of the Proposed Takeover.

10. On July 19, 2011, defendant denied Plaintiff's FOIA request.

11. On August 3, 2011, I participated in a conference call with Laurence H. Schecker, Esq. and Neil Dellar of the FCC to discuss Plaintiff's disagreement with the denial of its FOIA request. I communicated all of the arguments set forth in these motion papers, but defendant was unmoved. As a result, I informed Mr. Schecker and Mr. Dellar that we planned on filing the instant lawsuit and bringing this motion.

12. Attached as Exhibit A is a true and correct copy of my letter, dated May 9, 2011 and filed in FCC WT Docket No. 11-65, attaching four Acknowledgments of Confidentiality executed by four Bursor & Fisher attorneys for access to NRUF/LNP Confidential Information pursuant to the procedures outlined in the Protective Order.

13. Attached as Exhibit B is a true and correct copy of the Protective Order.

14. Attached hereto as Exhibit C is a true and correct copy of the Reply Comments.

15. Attached hereto as Exhibit D is a true and correct redacted copy of the Filed Weir Declaration.

16. Attached hereto as Exhibit E is a true and correct copy of the FCC's acknowledgment of receipt of Plaintiff's June 20, 2011 FOIA request for "An unredacted copy of the [Filed Weir Declaration]." ("FOIA Request").

17. Attached hereto as Exhibit F is a true and correct copy of the July 19, 2011 letter signed by Nese B. Guendelsberger, the Spectrum & Competition Policy Division Chief of the FCC's Wireless Telecommunications Bureau, denying Plaintiff's FOIA Request. ("FOIA Denial").

18. Attached hereto as Exhibit G is a true and correct copy of Plaintiff's preliminary comments in FCC WT Docket No. 11-65 made on behalf of its clients, dated May 31, 2011 and filed in WT Docket No. 11-65.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of August, 2011.



JOSEPH I. MARCHESE